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15 Attorneys for Debtor
16 City of Stockton

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

20 In re:
21 **City of Stockton, California**
22 Debtor.
23 **Michael A. Cobb,**
24 Appellant,
25 v.
26 **City of Stockton, California,**
27 Appellee.
28

District Court Case Number
NO. 2:14-CV-01272-KJM
Bankruptcy Court Case Number
NO. 12-32118-C-9

**STIPULATION AND REQUEST FOR
CERTIFICATION TO COURT OF
APPEALS BY ALL PARTIES**

1 Appellant Michael A. Cobb and Appellee the City of Stockton (collectively, the
2 “Parties”), through their respective counsel, hereby stipulate to the following:

3 1. On June 3, 2014, the Parties jointly filed their Official Form 24 – Certification To
4 Court Of Appeals By All Parties [Bankr. Dkt. No. 1540] (“Certification Request”) with the
5 bankruptcy court. The Certification Request, a copy of which is attached hereto as Exhibit A,
6 requests certification of this action to the Court of Appeals for the Ninth Circuit pursuant to 28
7 U.S.C. § 158(d).

8 2. Section 158(d)(2)(B)(ii) permits parties to a bankruptcy appeal to request
9 certification to the court of appeals when they agree that circumstances warranting direct appeal
10 to the court of appeals are present. Upon such “request made by a majority of the appellants and
11 a majority of the appellees,” the court “shall make the certification” requested. *Id.* Certification
12 in these circumstances is required and non-discretionary.

13 3. Federal Rule of Bankruptcy Procedure 8001(f)(3)(A) provides that the parties’
14 request for certification “shall be filed . . . with the clerk of the court in which the matter is
15 pending.” For purposes of a request for certification of a bankruptcy appeal, Federal Rule of
16 Bankruptcy Procedure 8007(b) provides that a matter is pending in the bankruptcy court until the
17 record has been transmitted to the district court.

18 4. Although this action was pending in the bankruptcy court when the Parties filed
19 the Certification Request, the record on appeal has now been transmitted to this Court with no
20 action having been taken on the Certification Request. This Court is therefore now the court in
21 which the matter is pending. The bankruptcy court clerk’s Certificate Of Record To District
22 Court Re: Bankruptcy Cases [Dkt. No. 3] is attached hereto as Exhibit B.

23 5. The undersigned respectfully renew their Certification Request before this Court,
24 and request that the Court, pursuant to 28 U.S.C. § 158(d)(2)(B)(ii), and based on the information
25 set forth in the Certification Request, enter the certification to the Court of Appeals for the Ninth
26 Circuit.

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Exhibit A

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14 Attorney for Creditor
 15 Michael A. Cobb

16 UNITED STATES BANKRUPTCY COURT
 17 EASTERN DISTRICT OF CALIFORNIA
 18 SACRAMENTO DIVISION
 19

20 In re:
 21 CITY OF STOCKTON, CALIFORNIA,
 22 Debtor.

Case No. 2012-32118
 D.C. No. OHS-15
 Chapter 9

**OFFICIAL FORM 24 –
 CERTIFICATION TO COURT OF
 APPEALS BY ALL PARTIES**

26 Debtor the City of Stockton, California (the “City”), and Creditor Michael A. Cobb
 27 (“Cobb”), through their respective counsel, submit to this Court, before which this matter is

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1 currently pending under Federal Rule of Bankruptcy Procedure 8001(f)(2), (f)(2)(A), the
2 following Certification to Court of Appeals by All Parties, in conformance with Official Form 24.

3 1. A notice of appeal having been filed in the above-styled matter on May 21, 2014,
4 appellant Michael A. Cobb and appellee the City of Stockton, who are all the appellants and all
5 the appellees, hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance
6 specified in 28 U.S.C. § 158(d)(2) exists as stated below.

7 2. Leave to appeal in this matter is required under 28 U.S.C. § 158(a).

8 3. This certification arises in an appeal from an interlocutory order or decree, and the
9 parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

10 4. The judgment, order, or decree involves a question of law as to which there is no
11 controlling decision of the court of appeals for this circuit or of the Supreme Court of the United
12 States. 28 U.S.C. § 158(d)(2)(A)(i).

13 5. Pursuant to 28 U.S.C. § 158(d)(2)(C) and Federal Rule of Bankruptcy Procedure
14 8001(f)(2)(B), (f)(3), the parties to this certification supplement the certification as follows:

15 (a) The following facts are necessary to understand the question presented.
16 These facts are drawn from the parties' Joint Stipulation of Material Facts Underlying Objection
17 of Creditor Michael A. Cobb, Dkt. No. 1252, and are not in dispute.

18 (i) Andrew C. Cobb, the father of Creditor Michael A. Cobb, was the
19 owner of a parcel of land located at 4218 Pock Lane in Stockton, California, San Joaquin County
20 Assessor's Parcel Number 179-180-07 (the "Parcel").

21 (ii) On August 10, 1998, the Stockton City Council issued Resolution
22 No. 98-0353 determining that the public necessity required the condemnation of a strip of land
23 across the Parcel for purposes of building a public road.

24 (iii) In conformance with the procedures set forth in California Civil
25 Procedure Code § 1255.010, the City had an expert appraiser conduct an appraisal of the strip of
26 land for purposes of determining the amount of compensation believed to be just, and produce a
27 summary of the basis for the appraisal. The appraisal valued the land at \$90,200.00. On

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1 October 23, 1998, consistent with § 1255.010, the City deposited that amount with the California
2 State Treasurer Condemnation Deposits Fund.

3 (iv) On October 23, 1998, the City initiated eminent domain
4 proceedings in the Superior Court of California, County of San Joaquin (the “Eminent Domain
5 Action”) to condemn a permanent easement over the strip of land.

6 (v) On October 17, 2000, the Stockton City Council issued Resolution
7 No. 00-0505 recognizing that the planned road over the Parcel had been completed and accepting
8 that improvement.

9 (vi) In November 2000, Michael A. Cobb, owner of the Parcel by
10 operation of state probate and trust succession following the death of Andrew C. Cobb, withdrew
11 the City’s deposit of probable just compensation in the amount of \$90,200.00, subject and
12 pursuant to California Civil Procedure Code § 1255.260.

13 (vii) On October 9, 2007, the Superior Court in the Eminent Domain
14 Action dismissed that action because it had not been brought to trial within five years of its
15 commencement.

16 (viii) On March 14, 2008, Cobb initiated an action in the Superior Court
17 of the State of California, County of San Joaquin (the “Inverse Condemnation Action”), seeking
18 relief pursuant to a claim of inverse condemnation.

19 (ix) On June 28, 2012, while the Inverse Condemnation Action was still
20 pending, the City petitioned for bankruptcy under chapter 9.

21 (x) On August 16, 2013, Cobb filed a Proof of Claim in the chapter 9
22 case. Cobb listed the total amount of his claim as \$4,200,997.26, consisting of \$1,540,000.00 as
23 the principal of his claim; \$2,282,997.26 as interest on the principal of his claim; \$350,000.00 as
24 attorney’s fees and litigation expenses; \$13,000.00 as costs of suit; and \$15,000.00 as real estate
25 taxes, maintenance costs, and insurance costs. Cobb did not indicate on his Proof of Claim that
26 the claim was secured or that the claim was entitled to priority under 11 U.S.C. § 507(a).

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1 (xi) On November 15, 2013, the City filed the First Amended Plan for
2 the Adjustment of Debts of City of Stockton, California. The City designated 19 classes of
3 claims. Cobb’s claim was included in Class 12 as a General Unsecured Claim.

4 (xii) On February 3, 2014, the City filed its Memorandum of Law in
5 Support of Confirmation of the First Amended Plan.

6 (xiii) On February 11, 2014, Cobb filed the Objection of Creditor
7 Michael A. Cobb to Plan and Confirmation Thereof. Cobb objected on the ground that treating
8 his claim as a general unsecured claim violates the Takings Clause of the Fifth and Fourteenth
9 Amendments of the U.S. Constitution.

10 (xiv) On May 7, 2014, the bankruptcy court overruled Cobb’s objection.

11 (xv) On May 21, 2014, Cobb filed a notice of appeal.

12 (b) At issue in this appeal is whether treating Cobb’s bankruptcy claim to
13 payment arising from his state law inverse condemnation action as a general unsecured claim is
14 inconsistent with the Takings Clause of the Fifth and Fourteenth Amendments.

15 (c) Cobb seeks reversal of the bankruptcy court’s order overruling his
16 objection. The City of Stockton seeks affirmance of the bankruptcy court’s order overruling the
17 objection.

18 (d) Under 28 U.S.C. § 158(d)(2)(A), the court of appeals has jurisdiction of an
19 appeal from an interlocutory order where “all the appellants and appellees (if any) acting jointly,
20 certify that ... (i) the judgment, order, or decree involves a question of law as to which there is no
21 controlling decision of the court of appeals for the circuit or of the Supreme Court of the United
22 States.” No decision of the Ninth Circuit or of the Supreme Court of the United States has
23 addressed whether a plan of adjustment in a bankruptcy case may be confirmed, consistent with
24 the Takings Clause of the Fifth and Fourteenth Amendments, where the plan of adjustment
25 proposes to treat a claim for payment arising from a state law inverse condemnation action as a
26 general unsecured claim.

27 (e) A copy of the order overruling Cobb’s objection is attached hereto.

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1 Pursuant to 28 U.S.C. § 158(d)(2)(B)(ii), which provides that the bankruptcy court “shall
 2 make the certification” upon “request made by a majority of the appellants and a majority of the
 3 appellees,” the undersigned respectfully request that this Court make the requested certification to
 4 the court of appeals.

5 Dated: June 3 , 2014

MARC A. LEVINSON
ROBERT M. LOEB
Orrick, Herrington & Sutcliffe LLP

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9 By: /s/ Marc A. Levinson
 10 MARC A. LEVINSON
 11 Attorneys for Debtor
 City of Stockton

12 Dated: June 3, 2014

13 BRADFORD J. DOZIER
Atherton & Dozier

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16 By: /s/ Bradford A. Dozier
 17 BRADFORD J. DOZIER
 18 Attorney for Creditor
 Michael A. Cobb

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FILED
MAY - 8 2014
JTB
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 12-32118-C-9
)
CITY OF STOCKTON, CALIFORNIA,)
)
)
Debtor(s).)

ORDER OVERRULING OBJECTION TO CONFIRMATION
OF PLAN OF ADJUSTMENT

Findings of fact and conclusions of law having been stated orally on the record in which this court chronicled the history of the condemnation and inverse condemnation actions that formed the basis of Michael Cobb's claims and noting that the decision of the California Court of Appeal regarding statute of limitations for the inverse condemnation action filed in 2007 by Michael Cobb (Cobb v. City of Stockton, 192 Cal. App. 4th 65, 120 Cal. Rptr. 3d 389, Cal. App. 3 Dist., January 26, 2011), dealt with only a narrow statute of limitations question that did not foreclose such other defenses as laches against Michael Cobb for having done nothing to pursue his claim for greater compensation, which was all that remained (pursuant to California Code of Civil Procedure § 1255.260) after he withdrew in November 2000 the \$90,200 that the City had deposited in the state treasury as probable compensation, and that continues to restrict his remedies even after the initial condemnation action was dismissed

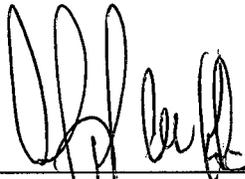
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1 in 2007 on account of inaction (the majority of which inaction is
2 ascribed to Michael Cobb who had the burden of going forward
3 after withdrawing the deposit) and for the other reasons
4 explained on the record,

5 IT IS ORDERED that the objection of Michael Cobb to
6 confirmation of the pending plan of adjustment filed by the City
7 of Stockton on account of his treatment as an unsecured creditor
8 is OVERRULED.

9 Dated: May 7, 2014.



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12 UNITED STATES BANKRUPTCY JUDGE
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Marc A. Levinson
400 Capitol Mall #3000
Sacramento CA 95814-4407

Bradford J. Dozier
305 N El Dorado #301
Stockton CA 95202-2306

Exhibit B

RGAF

FILED
JUL 08 2014
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re)
City of Stockton)
)
)
)

Debtor(s))

District Court Case No. 2:14-cv-01272-KJM

Bankruptcy Court Case No. 12-32118

Docket Control No.

FILED
Jul 08, 2014
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

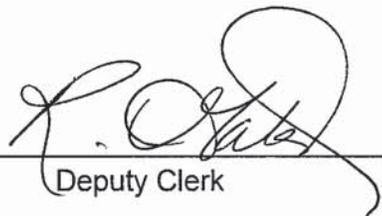
CERTIFICATE OF RECORD TO DISTRICT COURT RE: BANKRUPTCY CASES

The undersigned Deputy Clerk of the U.S. Bankruptcy Court for the Eastern District of California, certifies that the record with respect to the above-captioned matter is complete for purposes of appeal. Pursuant to Fed.R.Bankr.P. 8007(b), the original record will be retained by this court. Excerpts of the record, including transcripts, shall be filed and served with briefs as an appendix, pursuant to Fed.R. Bankr.P. 8009(d).

Dated: 07/08/14

FOR THE COURT
WAYNE BLACKWELDER, CLERK

U.S. Bankruptcy Court
501 I Street, Suite 3-200
Sacramento, CA 95814-2322
(916) 930-4400

By: 
Deputy Clerk